

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 922 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

LAXMI INDUSTRIAL CO.OP.SOC.LTD(PROPOSED)THRO' PROMOTERS

Versus

KALIDAS MATHURJI THAKOR

Appearance:

MR JAYANT PATEL for Petitioners

MR VH DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. This is a revision under section 115, CPC, at the instance of the original plaintiffs. The plaintiffs have filed a suit in the Civil Court contending that they were in possession of the land in question by virtue of an agreement of sale executed in their favour by the defendants, that such possession of the plaintiffs was sought to be disturbed by the defendants and attempts were being made to dispossess the plaintiffs and

therefore the plaintiffs sought a permanent injunction restraining the defendants from disturbing the possession of the plaintiffs.

2. During the course of the suit the plaintiffs filed an application Exh.34 for amendment of the plaint under Order 6, Rule 17, CPC, seeking to introduce the necessary averments in the plaint to the effect that they were in possession of the land on account of being the beneficiaries of the agreement of sale executed in their favour by the defendants, that they were entitled to obtain specific performance of such agreement of sale, and by way of consequential relief also sought to add a prayer to the suit plaint that the court be pleased to direct the defendants to execute the necessary sale deed in favour of the plaintiffs.

3. The trial court rejected the amendment application of the plaintiffs, substantially on the ground of the barrier raised by Order 2 Rule 2, CPC. In the opinion of the trial court the necessary averments leading to the prayer for specific performance of the agreement of sale in favour of the plaintiffs could have been made in the original plaint, and since this had not been done, the provisions of Order 2, Rule 2 would create a bar against permitting such an amendment.

4. This view is clearly erroneous inasmuch as the trial court has misunderstood the scope and effect of the provisions of Order 2, Rule 2, CPC. In short, Order 2, Rule 2 would create a bar against the subsequent suit where relief is claimed which could have and should have been made in the earlier suit. The position is quite different where in a pending suit the plaintiff wishes to seek an additional relief to which he would be entitled to on the basis of fundamental averments already made in the existing suit. This position is amply made clear by a decision of this court in the case of Sheth Chimanlal Ambalal Vs. Shah Hasmukhlal reported at 17 GLR 40. Paragraphs 2, 5 and 6 of the said decision clearly explain this position.

5. The impugned order passed by the trial court disallowing the amendment is therefore clearly erroneous and deserves to be quashed and set aside. Accordingly it is quashed and set aside. The amendment application of the plaintiffs at Exh.34 is accordingly granted. It is clarified that the status quo order as to possession of the disputed property which prevails today shall continue to operate until the amendment is carried out and consequential orders obtained from the trial court.

6. This revision is accordingly allowed. Rule is
made absolute with no order as to costs. D.S.
permitted.
